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DATO' ABU HASAN SARIF

v.

DATO' DR ABD ISA ISMAIL

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FEDERAL COURT, PUTRAJAYA
ZULKEFLI MAKINUDIN CJ (MALAYA)
HASHIM YUSOFF FCJ
AHMAD MAAROP FCJ
[CIVIL APPLICATION NO: 08-395-09/2011 (W)]

C

12 JANUARY 2012

CONSTITUTIONAL LAW: *Courts - Federal Court - Jurisdiction to review - Whether having inherent power to review its own decision as well as decisions of Court of Appeal - Whether equipped with power to*

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uphold fair administration of justice and to prevent injustice and/or abuse of process - Rules of the Federal Court 1995, r. 137

CONSTITUTIONAL LAW: *Courts - Court of Appeal - Power to order stay of own decision - Court of Appeal ordering stay of own decision in respect of declaratory relief - Whether a misdirection in law -*

E

Whether causing injustice - Whether decision to stay could be reviewed by Federal Court - Rules of the Federal Court 1995, r. 137

JURISDICTION: *Federal Court - Inherent powers - Power to review on decision - Whether having power to review its own decision as well*

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as decisions of Court of Appeal - Rules of the Federal Court 1995, r. 137

The applicant is the State Assemblyman for the constituency of Kota Siputeh, Kedah ('N3'), having been elected to the seat in

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the 2008 general election. In 2009, the applicant was absent at two consecutive sittings of the State Legislative Assembly ('SLA'), and following that, the respondent, the Speaker of the SLA, informed the Election Commission of Malaysia ('EC') that N3 had fallen vacant. The EC however decided that N3 had not fallen

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vacant and consequently refused to hold any by-election for the seat. The respondent applied to the High Court for a judicial review of the EC's decision, and on 16 November 2009, the High Court declared N3 vacant and that the applicant was no longer the State Assemblyman for N3. Both the applicant and the EC

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appealed. On 18 August 2011, the Court of Appeal allowed the applicant's appeal and restored him as the State Assemblyman for

N3. The respondent filed an application for leave to appeal to the Federal Court, but pending that, applied to the Court of Appeal for a stay of its decision. On 2 November 2011, the Court of Appeal, *vide* a different corum, granted the respondent's application for stay. Dissatisfied, the applicant invoked r. 137 Rules of the Federal Court 1995 ('RFC') and applied for an order that the Order of the Court of Appeal dated 2 November 2011, which ordered a stay of its own decision given on 18 August 2011, be discharged or set aside. Before the learned justices of the Federal Court herein, the respondent questioned the apex court's jurisdiction to hear the application under r. 137 RFC, and in any case argued that the application was an abuse of process, as the applicant, rightly, ought to have filed an application for leave to appeal under s. 96 of the Courts of Judicature Act 1964.

Held (allowing application to set aside with no order as to costs)
Per Zulkefli Makinudin CJ Malaya delivering the judgment of the court:

(1) The Federal Court has the inherent power to review any order or decision given not only by the Federal Court itself, but also by the Court of Appeal. Being the apex court, it is equipped with a power to uphold the fair administration of justice and to prevent injustice or abuse of the process of the court. Based on the factual circumstances of this application, there is a clear case of injustice being committed against the applicant as a result of the Court of Appeal granting a stay of its own decision of 18 August 2011. Consequently, the Federal Court has the power under r. 137 RFC to hear the applicant's application. (paras 5, 7 & 8)

(2) As a result of the Court of Appeal's order on 2 November 2011 allowing a stay, the applicant has suffered grave prejudice and injustice as the applicant had been deprived of his successful litigation and the right to be restored as the Assemblyman for N3. As an elected Assemblyman, the applicant has a constitutional duty to carry out his duties, functions and responsibilities. The applicant's tenure as an Assemblyman, however, is of a finite duration, lasting only until the next general election. If the stay granted by the Court of Appeal is allowed to persist until the disposal of the respondent's application for leave to appeal, there is a real possibility that by then, the applicant's tenure as Assemblyman

would have come to an end. In such a case, the applicant would have been permanently deprived of his rights as Assemblyman. More importantly, the applicant's constituency would have been deprived of a representation in the Kedah State Legislative Assembly. (paras 9 & 10)

(3) The applicant was unable to attend the SLA for 21 months from 16 November 2009 until 18 August 2011. Such a prolonged deprivation of rights, especially in light of the applicant's successful appeal on 18 August 2011, is a grave injustice to the applicant and cannot in any manner whatsoever, be compensated by damages or costs. (para 11)

(4) The applicant's appeal had been heard in full by the Court of Appeal on merits and the rights and interest have crystallized. On the other hand, the respondent merely has a contingent interest which may or may not come to fruition, depending on the outcome of his leave application and/or appeal. In the circumstances, this court should prevent an injustice and exercise its discretion in the applicant's favour to allow the applicant to enjoy his fruits of success and not allow his constitutional rights to be extinguished merely because the respondent wishes to pursue further litigation. (para 11)

(5) Even if the applicant is allowed to attend and participate in the proceedings in the State Assembly and subsequently the respondent is successful in his leave application and thereafter his appeal to the Federal Court, the applicant's participation and attendance would not render the proceedings in the SLA null and void. Therefore, even if the stay granted by the Court of Appeal on 2 November 2011 is set aside, the respondent's appeal would not be rendered nugatory. (para 12)

(6) The Court of Appeal in granting the stay application of the respondent had misdirected itself on the factual circumstances of the case. The Court of Appeal was clearly in error when it made a finding that there were special circumstances to grant the stay application whereas there are in fact no special circumstances shown. (para 13)

(7) The Court of Appeal had also erred in law in granting the stay application of the respondent after having allowed the appeal of the applicant against the decision of the High Court. At the High Court, the respondent had applied for declaratory relief

to declare that the applicant was no longer the State Assemblyman for N3 and for a declaration that the seat be declared vacant. It is an established principle of law that a stay application cannot be granted in regard to a declaratory relief. (para 14)

Bahasa Malaysia *Translation Of Headnotes*

Pemohon adalah seorang Ahli Dewan Undangan Negeri ('ADUN') bagi kawasan pilihanraya Kota Siputeh, Kedah ('N3'), setelah memenangi kerusi tersebut pada pilihanraya umum tahun 2008. Pada tahun 2009, pemohon telah secara berturut-turut gagal menghadiri dua persidangan Dewan Undangan Negeri ('DUN'), dan berikutan itu, responden, iaitu Speaker DUN, memberitahu Suruhanjaya Pilihanraya Malaysia ('SPR') bahawa kerusi N3 telah menjadi kosong. SPR bagaimanapun memutuskan bahawa N3 masih belum kosong dan sekaligus enggan mengadakan sebarang pilihanraya kecil bagi kerusi tersebut. Responden memohon kepada Mahkamah Tinggi bagi mengkaji semula keputusan SPR, dan pada 16 November 2009, Mahkamah Tinggi mengisytiharkan N3 sebagai telah dikosongkan dan pemohon tidak lagi menjadi ADUN bagi N3. Kedua-dua pemohon dan SPR merayu. Pada 8 Ogos 2011, Mahkamah Rayuan telah membenarkan rayuan pemohon sekaligus mengembalikan kedudukan pemohon sebagai ADUN N3. Responden telah memfailkan permohonan kepada Mahkamah Persekutuan untuk kebenaran merayu, tetapi, sementara itu, telah memohon kepada Mahkamah Rayuan untuk penggantungan keputusannya. Pada 2 November 2011, Mahkamah Rayuan, melalui panel yang berbeza, telah membenarkan permohonan responden untuk penggantungan keputusan. Tidak berpuashati, pemohon membangkitkan k. 137 Kaedah-Kaedah Mahkamah Persekutuan 1995 ('KMP'), memohon perintah bahawa Perintah Mahkamah Rayuan bertarikh 2 November 2011, yang memerintahkan penggantungan keputusannya sendiri yang dibuat pada 18 Ogos 2011, dibatal atau diketepikan. Di hadapan yang arif hakim-hakim Mahkamah Persekutuan di sini, responden mempersoalkan bidangkuasa mahkamah tertinggi itu mendengar permohonan di bawah k. 137, dan walau apapun berhujah bahawa permohonan tersebut adalah suatu penyalahgunaan proses, oleh kerana pemohon sepatutnya memfailkan permohonan untuk kebenaran merayu di bawah s. 96 Akta Mahkamah Kehakiman 1964.

Diputuskan (membenarkan permohonan untuk mengenepikan tanpa sebarang perintah mengenai kos)

Oleh Zulkefli Makinudin HB Malaya menyampaikan penghakiman mahkamah:

(1) Mahkamah Persekutuan mempunyai kuasa sedia ada untuk mengkaji semula sebarang perintah atau keputusan yang dibuat bukan sahaja oleh Mahkamah Persekutuan sendiri, tetapi juga oleh Mahkamah Rayuan. Sebagai mahkamah tertinggi, mahkamah ini dibekalkan dengan kuasa untuk menegakkan pentadbiran keadilan yang saksama dan menghalang ketidakadilan atau penyalahgunaan proses mahkamah. Berdasarkan halkeadaan fakta permohonan ini, terdapat suatu ketidakadilan jelas yang ditimpa keatas pemohon ekoran dari keputusan Mahkamah Rayuan menggantung keputusannya sendiri yang bertarikh 18 Ogos 2011 tersebut. Oleh itu, Mahkamah Persekutuan mempunyai kuasa di bawah k. 137 KMP untuk mendengar permohonan pemohon.

(2) Akibat dari perintah Mahkamah Rayuan membenarkan penggantungan pada 2 November 2011, pemohon mengalami prejudis yang berat serta ketidakadilan disebabkan pemohon telah dinafikan kemenangan guamannya serta hak untuk dikembalikan sebagai ADUN N3. Sebagai seorang ADUN, pemohon mempunyai hak perlembagaan untuk menjalankan tugas-tugas dan tanggungjawabnya. Tempoh pemohon menjadi ADUN, bagaimanapun, adalah terhad, iaitu hingga ke pilihanraya umum berikutnya. Jika penggantungan yang diberikan oleh Mahkamah Rayuan dibenarkan berkuatkuasa sehingga pelupusan permohonan responden untuk kebenaran merayu, wujud kemungkinan yang besar bahawa, pada waktu itu, tempoh masa pemohon sebagai ADUN telah pun berakhir. Dalam kes sedemikian, pemohon akan berkekalan dinafikan hak-haknya sebagai ADUN. Lebih penting, kawasan pilihanraya pemohon akan dinafikan seorang wakil di dalam Dewan Undangan Negeri Kedah.

(3) Pemohon tidak dapat menghadiri DUN selama 21 bulan, iaitu dari 16 November 2009 hingga 18 Ogos 2011. Penafian hak yang berpanjangan ini, terutamanya dilihat dari sudut kejayaan rayuan pemohon pada 18 Ogos 2011, adalah suatu ketidakadilan yang teruk dan sama sekali tidak boleh dipampasi oleh gantirugi atau kos.

(4) Rayuan pemohon telah didengar sepenuhnya oleh Mahkamah Rayuan di atas merit dan hak-hak serta kepentingan-kepentingan telah pun menjadi kenyataan. Sebaliknya, responden hanya mempunyai kepentingan yang kontingen yang mungkin menjadi kenyataan dan mungkin juga tidak, bergantung kepada keputusan permohonan kebenarannya dan/ atau rayuannya. Dalam keadaan sedemikian, mahkamah ini harus menghalang ketidakadilan dan menggunakan budibicaranya secara yang berpihak kepada pemohon, iaitu dengan membenarkan pemohon menikmati hasil dari kejayaannya dan tidak membiarkan hak-hak perlembagaannya dihapuskan cuma kerana responden berhasrat untuk melanjutkan lagi litigasi.

(5) Jikapun pemohon dibenarkan menghadiri dan mengambil bahagian dalam prosiding Dewan Undangan Negeri dan kemudiannya responden berjaya dalam permohonan kebenarannya dan begitu juga dalam rayuannya di Mahkamah Persekutuan, kehadiran dan pengambilbahagian pemohon tidak akan menjadikan prosiding DUN itu batal dan tak sah. Oleh itu, jikapun penggantungan yang diberikan oleh Mahkamah Rayuan pada 2 November 2011 diketepikan, rayuan responden tidak akan menjadi sia-sia.

(6) Mahkamah Rayuan dalam membenarkan permohonan penggantungan responden telah tersalah arah akan dirinya berkaitan halkeadaan fakta kes. Mahkamah Rayuan jelas khilaf apabila ia mendapati bahawa terdapat halkeadaan istimewa yang mewajarkan pemberian penggantungan sedangkan hakikatnya tiada apa-apa halkeadaan istimewa telah dibuktikan.

(7) Mahkamah Rayuan juga khilaf di sisi undang-undang kerana membenarkan permohonan penggantungan responden memandangkan ia telah pun membenarkan rayuan pemohon terhadap keputusan Mahkamah Tinggi. Di Mahkamah Tinggi, responden telah memohon untuk relif pengisytiharan untuk mengisytiharkan pemohon tidak lagi menjadi ADUN N3 dan untuk deklarasi bahawa kerusi tersebut telah dikosongkan. Sudah menjadi prinsip undang-undang yang mantap bahawa suatu permohonan untuk penggantungan tidak boleh diberikan berhubung dengan suatu relif pengisytiharan.

Case(s) referred to:

Asean Security Paper Mills Sdn Bhd v. Mitsui Sumitomo Insurance (Malaysia) Bhd [2008] 6 CLJ 1 FC ***(refd)***

Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd [2002] 1 CLJ 645 FC ***(refd)***

Takako Sakao v. Ng Pek Yuen & Anor [2010] 1 CLJ 429 FC ***(refd)***

Tan Sri Eric Chia Eng Hock v. PP [2007] 1 CLJ 565 FC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, s. 96

Rules of the Federal Court 1995, r. 137

For the applicant - Dato' Firoz Hussein Ahmad Jamaluddin (Datuk Mohd Hafarizam Harun & Chieng Mai with him); M/s Hafarizam Wan & Aisha Mubarak

For the respondent - Edmund Bon Tai Soon (Zulqarnain Lukman with him); M/s Chooi & Co

Watching brief for the State Government of Kedah - Ruzaimah Mohd Ridzuan; State Legal Advisor

[Appeal from Court of Appeal, Civil Appeal No: W-02-2654-2009]

Reported by Wan Sharif Wan Ahmad

JUDGMENT

Zulkefli Makinudin CJ (Malaya):

Introduction

[1] This is an application by the applicant filed by way of notice of motion to this court pursuant to r. 137 of the Rules of the Federal Court 1995 ("RFC") for an order that the order of the Court of Appeal dated 2 November 2011 which ordered a stay of its own decision given on 18 August 2011 be discharged and/or set aside. We heard and allowed the application on 14 November 2011. We now give the reasons for our decision.

Background Facts

[2] The relevant background facts leading to this application by the applicant may be summarized as follows:

(1) On 17 August 2009, the respondent as the speaker of the Legislative Assembly of the State of Kedah ("the speaker") informed the Election Commission of Malaysia ("EC") that the Kota Siputeh (N3) seat in the State of Kedah had purportedly become vacant due to the applicant's non-

attendance as a State Assemblyman at the State Assembly on purportedly two consecutive meetings of the State Assembly, namely on 19 April 2009 and 9 August 2009.

(2) On 1 September 2009, the EC decided that the Kota Siputeh (N3) seat had not become vacant.

(3) On 1 October 2009, the respondent filed an application for judicial review to, *inter alia*, seek a declaration that the applicant was no longer the State Assemblyman for Kota Siputeh (N3) and that the applicant's seat was vacant, as well as a *certiorari* to quash the EC's decision set out in its letter dated 1 September 2009.

(4) On 16 November 2009, the High Court granted the declarations and the order for *certiorari* sought by the respondent.

(5) Resulting from the High Court's decision, the applicant was no longer the State Assemblyman of Kota Siputeh and his seat was declared vacant.

(6) The applicant then filed an appeal to the Court of Appeal against the decision of the High Court dated 16 November 2009.

(7) The EC also filed a separate appeal to the Court of Appeal against the decision of the High Court dated 16 November 2009.

(8) On 18 August 2011, the Court of Appeal allowed the applicant's appeal and set aside the High Court's decision dated 16 November 2009.

(9) The consequence of the Court of Appeal's decision on 18 August 2011 was, in essence, that the decision of the EC regarding non vacancy was upheld, and in effect, the applicant was restored as the State Assemblyman of Kota Siputeh (N3) constituency.

(10) The respondent filed an application for leave to appeal to the Federal Court against the decision of the Court of Appeal dated 18 August 2011. The respondent also applied to the Court of Appeal for a stay of the Court of Appeal's decision dated 18 August 2011 pending the disposal of the application of leave to appeal to the Federal Court.

(11) On 2 November 2011 the Court of Appeal comprising the coram of a different member panel from the member panel that allowed the application's appeal on 18 August 2011 granted the respondent's application for a stay of the Court of Appeal's decision dated 18 August 2011.

Preliminary Objection

[3] At the outset of the hearing of the applicant's application before us learned counsel for the respondent raised a preliminary objection as to the jurisdiction of this court to hear the application under r. 137 of the RFC. Rule 137 of the RFC provides as follows:

> **137. Inherent powers of the Court**
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> For the removal of doubts it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to hear any application or to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

[4] It is the contention of the respondent that the applicant's application is an abuse of the court's process and that the applicant ought to have first filed an application for leave to appeal to the Federal Court pursuant to s. 96 of the Courts of Judicature Act 1964 ("CJA"). Section 96 of the CJA provides as follows:

> Subject to any rules regulating the proceedings of the Federal Court in respect of appeals from the Court of Appeal, an appeal shall be from the Court of Appeal to the Federal Court with the leave of the Federal Court ...
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> (a) from any judgment or order of the Court of Appeal in respect of any civil cause or matter decided by the High Court in the exercise of its original jurisdictional; involving a question of general principle decided for the first time or a question of importance upon which further argument and a decision of the Federal Court would be to public advantage; or
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> (b) from any decision as to the effect of any provision of the Constitution including the validity of any written law relating to any such provision.

[5] Having heard the submissions made by learned counsel for both the applicant and respondent, we are of the view this court has the inherent powers under r. 137 of the RFC to hear the applicant's application. Based on the factual circumstances of the applicant's case we find that there is a clear case of injustice being committed against the applicant as a result of the order of the Court of Appeal in granting a stay of its own decision of 18 August 2011 which allowed the applicant's appeal against the decision of the High Court dated 16 November 2009. On the inherent powers of the court we would refer to the case of *Asean Security Paper Mills Sdn Bhd v. Mitsui Sumitomo Insurance (Malaysia) Bhd* [2008] 6 CLJ 1 wherein Zaki Tun Azmi PCA (as he then was) in delivering the judgment of the Federal Court elaborated on the meaning of "inherent powers" and "inherent jurisdiction" as follows:

> **(36)** What then is the meaning of inherent jurisdiction? According to the *Concise Oxford Dictionary*, 'inherent' means 'existing in something, esp. as a permanent or characteristic attribute'. In the context of the law, that inherent jurisdiction is deemed to be part of the court's power to do all things reasonably necessary to ensure fair administration of justice within its jurisdiction subject to valid existing laws including the Constitution. In other words, that inherent power is found within the very nature of a court of law, unlike power conferred by statute.
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> **(17)** The *Halsbury's Laws of England*, 4th Edition in volume 37 at para 12 refers to "inherent jurisdiction" as follows:
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> > In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine, and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent vexation or oppression, to do justice between the parties and to secure a fair trial between them.

[6] Still on the inherent powers of the court useful reference may be made to the Federal Court's case of *Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd* [2002] 1 CLJ 645 whereby Steve Shim CJSS, in his judgment had stated:

Inherent Powers of the Federal Court

> Where there is a clear case of injustice being committed, the Federal Court, as an apex court in the land, cannot stand idly by and do nothing. It cannot and should not shirk from its responsibility of preventing injustice in appropriate cases. It must deal with it. In this regard, the Federal Court has been conferred with inherent powers under rule 137 Federal Court Rules 1995.

[7] As regards the jurisdiction of this court to hear the applicant's application, it is trite law that the Federal Court has the inherent power to review any order or decision given not only by the Federal Court itself, but also extends to that of the Court of Appeal. In support of this proposition we would refer to the case of *Tan Sri Eric Chia Eng Hock v. PP* [2007] 1 CLJ 565 wherein Augustine Paul, FCJ *inter alia* at p. 592 had this to say:

> *The result of the context and wide range of r. 137 is that the words 'the court' in part (c) must be construed as 'any court' and not as provided in Rule 2 of the Rules of the Federal Court.* Such a departure from the meaning given to a particular word in the definition clause of a statutory provision is permissible if the context in which the word is used warrants it as explained by this court in *Metramac Corporation Sdn Bhd v. Fawziah Holdings Sdn Bhd* [2006] 3 CLJ 177. **Thus the Federal Court may review decisions made by the Court of Appeal in the exercise of its inherent powers.** (emphasis added)

[8] It is our considered view that this court as the apex court is equipped with a power to uphold the fair administration of justice and to prevent injustice and/or abuse of the process of the court. With this inherent power it can therefore maintain its character as a court of justice as is highlighted in the earlier cited case authorities. For this reason we would dismiss the respondent's preliminary objection.

Decision

[9] On the merits of the applicant's application we are of the view that as a result of the Court of Appeal's order on 2 November 2011 in allowing a stay of its own decision dated 18 August 2011, the applicant has suffered grave prejudice and injustice as the applicant had been deprived of his successful litigation and his right to be restored as the Assemblyman for the Kota Siputeh seat (N3) in the State Assembly of Kedah.

[10] It is to be noted the applicant was democratically elected by the constituents of Kota Siputeh (N3) during the general election in March 2008 with a majority of 495. The applicant has a constitutional duty to carry out his duties and functions and responsibilities as an Assemblyman. The applicant's tenure as an Assemblyman is of a finite duration, lasting only until the next general election. If the stay granted by the Court of Appeal on 2 November 2011 is allowed to persist until the disposal of the respondent's application for leave to appeal and/or at the stage of the appeal, there is a real possibility that by then, the applicant's tenure as Assemblyman would have come to an end. In such a case, the applicant would have been permanently deprived of his rights as Assemblyman. More importantly, the applicant's constituency would have been deprived of a representation in the Kedah State Legislative Assembly. It is the democratic right of the people of Kota Siputeh to be represented by an Assemblyman and the order of the Court of Appeal dated 2 November 2011 deprives them of such a right.

[11] We noted that the applicant was unable to attend the Assembly from 16 November 2009 until 18 August 2011, that is for a period of 21 months. We are of the view such a prolonged deprivation of rights, especially in light of the applicant's successful appeal in 18 August 2011, is of a grave injustice to the applicant and cannot in any manner whatsoever be compensated by damages or costs. The applicant's appeal had been heard in full and disposed of by the Court of Appeal on merits and his rights and interest have crystallized. On the other hand, the respondent herein merely has a contingent interest which may or may not come to fruition, depending on the outcome of his leave application and/or the appeal. In the circumstances, we are of the view that this court should prevent an injustice and exercise its discretion in the applicant's favour to allow the applicant to enjoy his fruits of success and not allow his constitutional rights to be extinguished merely because the respondent wishes to pursue further litigation.

[12] Further, even if the applicant is allowed to attend and participate in the proceedings in the State Assembly and subsequently the respondent is successful in his leave application and thereafter his appeal to the Federal Court, the applicant's participation and attendance would not render the proceedings in

A the State Assembly null and void. Therefore, even if the stay granted by the Court of Appeal on 2 November 2011 is set aside, the respondent's appeal would not be rendered nugatory.

[13] We are therefore of the considered view that the Court of
B Appeal in granting the stay application of the respondent had misdirected itself on the factual circumstances of the case. The Court of Appeal was clearly in error when it made a finding that there were special circumstances to grant the stay application whereas for the reasons we had herein before highlighted there are
C in fact no special circumstances shown.

[14] We are also of the view that the Court of Appeal erred in law in granting the stay application of the respondent in relation to its own decision after having allowed the appeal of the applicant against the decision of the High Court. At the High Court the
D respondent had applied for a declaratory relief to declare that the applicant was no longer the State Assemblyman for Kota Siputeh (N3) Constituency and for a declaration that the seat be declared vacant. It is an established principle of law that a stay application cannot be granted in regard to a declaratory relief. On this point
E we would cite the case of *Takako Sakao v. Ng Pek Yuen & Anor* [2010] 1 CLJ 429 wherein Gopal Sri Ram FCJ in delivering the judgment of the Federal Court had this to say:

> ... The weakness of the remedy of declaration lies in the want of
F its enforceability. A declaration cannot be enforced by execution. In *Prakash Chand v. Grewal & Anor* [1975] CRI LJ 679, the court held as follows:
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> > A declaratory decree cannot be executed as it only declares the rights of the decree-holder *qua* the judgment-debtor and
G does not, in terms, direct the judgment-debtor to do or to refrain from doing any particular act or things. Since there is no command issued to the judgment-debtor to obey, the civil process cannot be issued for the compliance of that mandate or command.
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> H **In other words, there can be no committal or other execution process issued to enforce a declaration. Since a declaration cannot be enforced, no question of staying it may arise.** (emphasis added)

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Conclusion

[15] For the reasons abovestated we allow the applicant's application with no order as to costs. The order of the Court of Appeal dated 2 November 2011 which ordered a stay of its own decision on 18 August 2011 is hereby discharged and/or set aside.